

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

CRYSTAL B. HARRIS,

Plaintiff,

NO: 4:20-CV-5043-TOR

## PROTECTIVE ORDER

ALLSTATE PROPERTY &  
CASUALTY INSURANCE  
COMPANY,

Defendant.

BEFORE THE COURT is the parties' Stipulated Motion for Protective Order.

ECF No. 19. The Court reviewed the Stipulated Motion, the files and record

herein, and is fully informed. The parties have stipulated to the following and the

Court hereby enters the Stipulated Protective Order as follows:

## 1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. It does not confer blanket protection on all

1 disclosures or responses to discovery, the protection it affords from public  
2 disclosure and use extends only to the limited information or items that are entitled  
3 to confidential treatment under the applicable legal principles, and it does not  
4 presumptively entitle parties to file confidential information under seal.

5 **2. “CONFIDENTIAL” MATERIAL**

6 “Confidential” material shall include the following documents and tangible  
7 things produced or otherwise exchanged:

8

- 9 (a) Allstate’s Casualty Claim Handling Manual;
- 10 (b) Allstate’s Claim Operations Manual; and
- 11 (c) Allstate’s First Party Casualty Claim Handling Manual.

12 **3. SCOPE**

13 The protections conferred by this agreement cover not only confidential  
14 material (as defined above), but also (1) any information copied or extracted from  
15 confidential material; (2) all copies, excerpts, summaries, or compilations of  
16 confidential material; and (3) any testimony, conversations, or presentations by  
17 parties or their counsel that might reveal confidential material.

18 However, the protections conferred by this agreement do not cover  
19 information that is in the public domain or becomes part of the public domain  
20 through trial or otherwise.

15 **4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL**

16 4.1 Basic Principles. A receiving party may use confidential material that  
17 is disclosed or produced by another party or by a non-party in connection with this  
18 case only for prosecuting, defending, or attempting to settle this litigation.

19 Confidential material may be disclosed only to the categories of persons and under  
20 the conditions described in this agreement. Confidential material must be stored  
and maintained by a receiving party at a location and in a secure manner that  
ensures that access is limited to the persons authorized under this agreement.

1       4.2    Disclosure of “CONFIDENTIAL” Information or Items. Unless  
2 otherwise ordered by the court or permitted in writing by the designating party, a  
3 receiving party may disclose any confidential material only to:

4               (a)    the receiving party’s counsel of record in this action, as well as  
5 employees of counsel to whom it is reasonably necessary to disclose the  
6 information for this litigation;

7               (b)    the officers, directors, and employees (including in house  
8 counsel) of the receiving party to whom disclosure is reasonably necessary for this  
9 litigation, unless the parties agree that a particular document or material produced  
10 is for Attorney’s Eyes Only and is so designated;

11               (c)    experts and consultants to whom disclosure is reasonably  
12 necessary for this litigation and who have signed the “Acknowledgment and  
13 Agreement to Be Bound” (Exhibit A);

14               (d)    the court, court personnel, and court reporters and their staff;

15               (e)    copy or imaging services retained by counsel to assist in the  
16 duplication of confidential material, provided that counsel for the party retaining  
17 the copy or imaging service instructs the service not to disclose any confidential  
18 material to third parties and to immediately return all originals and copies of any  
19 confidential material;

20               (f)    during their depositions, witnesses in the action to whom  
21 disclosure is reasonably necessary and who have signed the “Acknowledgment and  
22 Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the designating  
23 party or ordered by the court. Pages of transcribed deposition testimony or  
24 exhibits to depositions that reveal confidential material must be separately bound  
25 by the court reporter and may not be disclosed to anyone except as permitted under  
26 this agreement;

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

4.3 Filing Confidential Material. Before filing confidential material or discussing or referencing such material in court filings, the filing party shall confer with the designating party, to determine whether the designating party will remove the confidential designation, whether the document can be redacted, or whether a motion to seal or stipulation and proposed order is warranted. During the meet and confer process, the designating party must identify the basis for sealing the specific confidential information at issue, and the filing party shall include this basis in its motion to seal, along with any objection to sealing the information at issue.

## 5. DESIGNATING PROTECTED MATERIAL

## 5.1 Exercise of Restraint and Care in Designating Material for Protection.

Each party or non-party that designates information or items for protection under this agreement must take care to limit any such designation to specific material that qualifies under the appropriate standards. The designating party must designate for protection only those parts of material, documents, items, or oral or written communications that qualify, so that other portions of the material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this agreement.

Mass, indiscriminate, or routinized designations are prohibited.

Designations that are shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to unnecessarily encumber or delay the case development process or to impose unnecessary expenses and burdens on other parties) expose the designating party to sanctions.

1        If it comes to a designating party's attention that information or items that it  
2 designated for protection do not qualify for protection, the designating party must  
3 promptly notify all other parties that it is withdrawing the mistaken designation.

4        **5.2 Manner and Timing of Designations.** Except as otherwise provided in  
5 this agreement (see, *e.g.*, second paragraph of section 5.2(a) below), or as  
6 otherwise stipulated or ordered, disclosure or discovery material that qualifies for  
protection under this agreement must be clearly so designated before or when the  
material is disclosed or produced.

7                (a)    **Information in documentary form:** (*e.g.*, paper or electronic  
8 documents and deposition exhibits, but excluding transcripts of depositions or  
9 other pretrial or trial proceedings), the designating party must affix the word  
“CONFIDENTIAL” to each page that contains confidential material. If only a  
10 portion or portions of the material on a page qualifies for protection, the producing  
11 party also must clearly identify the protected portion(s) (*e.g.*, by making  
12 appropriate markings in the margins).

13                (b)    **Testimony given in deposition or in other pretrial proceedings:**  
14 the parties and any participating non-parties must identify on the record, during the  
15 deposition or other pretrial proceeding, all protected testimony, without prejudice  
16 to their right to so designate other testimony after reviewing the transcript. Any  
17 party or non-party may, within fifteen days after receiving the transcript of the  
18 deposition or other pretrial proceeding, designate portions of the transcript, or  
exhibits thereto, as confidential. If a party or non-party desires to protect  
confidential information at trial, the issue should be addressed during the pre-trial  
conference.

19                (c)    **Other tangible items:** the producing party must affix in a  
20 prominent place on the exterior of the container or containers in which the  
information or item is stored the word “CONFIDENTIAL.” If only a portion or

1 portions of the information or item warrant protection, the producing party, to the  
2 extent practicable, shall identify the protected portion(s).

3       5.3    Inadvertent Failures to Designate. If timely corrected, an inadvertent  
4 failure to designate qualified information or items does not, standing alone, waive  
5 the designating party's right to secure protection under this agreement for such  
6 material. Upon timely correction of a designation, the receiving party must make  
7 reasonable efforts to ensure that the material is treated in accordance with the  
8 provisions of this agreement.

9       6.      **CHALLENGING CONFIDENTIALITY DESIGNATIONS**

10       6.1     Timing of Challenges. Any party or non-party may challenge a  
11 designation of confidentiality at any time. Unless a prompt challenge to a  
12 designating party's confidentiality designation is necessary to avoid foreseeable,  
13 substantial unfairness, unnecessary economic burdens, or a significant disruption  
14 or delay of the litigation, a party does not waive its right to challenge a  
15 confidentiality designation by electing not to mount a challenge promptly after the  
16 original designation is disclosed.

17       6.2     Meet and Confer. The parties must make every attempt to resolve any  
18 dispute regarding confidential designations without court involvement. Any motion  
19 regarding confidential designations or for a protective order must include a  
20 certification, in the motion or in a declaration or affidavit, that the movant has  
engaged in a good faith meet and confer conference with other affected parties in  
an effort to resolve the dispute without court action. The certification must list the  
date, manner, and participants to the conference. A good faith effort to confer  
requires a face-to-face meeting or a telephone conference.

21       6.3     Judicial Intervention. If the parties cannot resolve a challenge without  
22 court intervention, the designating party may file and serve a motion to retain  
23 confidentiality. The burden of persuasion in any such motion shall be on the

1 designating party. Frivolous challenges, and those made for an improper purpose  
2 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may  
3 expose the challenging party to sanctions. All parties shall continue to maintain  
4 the material in question as confidential until the court rules on the challenge.

5 **7. PROTECTED MATERIAL SUBPOENAED OR ORDERED**  
6 **PRODUCED IN OTHER LITIGATION**

7 If a party is served with a subpoena or a court order issued in other litigation  
8 that compels disclosure of any information or items designated in this action as  
9 “CONFIDENTIAL,” that party must:

10 (a) promptly notify the designating party in writing and include a  
11 copy of the subpoena or court order;

12 (b) promptly notify in writing the party who caused the subpoena  
13 or order to issue in the other litigation that some or all of the material covered by  
14 the subpoena or order is subject to this agreement. Such notification shall include a  
15 copy of this agreement; and

16 (c) cooperate with respect to all reasonable procedures sought to be  
17 pursued by the designating party whose confidential material may be affected.

18 **8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

19 If a receiving party learns that, by inadvertence or otherwise, it has disclosed  
20 confidential material to any person or in any circumstance not authorized under  
this agreement, the receiving party must immediately (a) notify in writing the  
designating party of the unauthorized disclosures, (b) use its best efforts to retrieve  
all unauthorized copies of the protected material, (c) inform the person or persons  
to whom unauthorized disclosures were made of all the terms of this agreement,  
and (d) request that such person or persons execute the “Acknowledgment and  
Agreement to Be Bound” that is attached hereto as Exhibit A.

1       **9. INADVERTENT PRODUCTION OF PRIVILEGED OR**  
2       **OTHERWISE PROTECTED MATERIAL**

3       When a producing party gives notice to receiving parties that certain  
4       inadvertently produced material is subject to a claim of privilege or other  
5       protection, the obligations of the receiving parties are those set forth in Federal  
6       Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify  
7       whatever procedure may be established in an e-discovery order or agreement that  
8       provides for production without prior privilege review. The parties agree to the  
9       entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

10      **10. NON TERMINATION AND RETURN OF DOCUMENTS**

11      Within 60 days after the termination of this action, including all appeals,  
12      each receiving party must return all confidential material to the producing party,  
13      including all copies, extracts and summaries thereof. Alternatively, the parties may  
14      agree upon appropriate methods of destruction.

15      Notwithstanding this provision, counsel are entitled to retain one archival  
16      copy of all documents filed with the court, trial, deposition, and hearing transcripts,  
17      correspondence, deposition and trial exhibits, expert reports, attorney work  
18      product, and consultant and expert work product, even if such materials contain  
19      confidential material.

20      The confidentiality obligations imposed by this agreement shall remain in  
21      effect until a designating party agrees otherwise in writing or a court orders  
22      otherwise.

1

**EXHIBIT A**

2

**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

3 I, \_\_\_\_\_ [print or type  
full name], of \_\_\_\_\_  
4 [print or type full address], declare under penalty of perjury that I have read in its  
5 entirety and understand the Stipulated Protective Order that was issued by the  
6 United States District Court for the Eastern District of Washington on July \_\_,  
7 2020 in the case of *Crystal B. Harris v. Allstate Property And Casualty Insurance*  
8 *Company, Inc.*, Case No. 4:20-cv-05043-TOR. I agree to comply with and to be  
9 bound by all the terms of this Stipulated Protective Order and I understand and  
10 acknowledge that failure to so comply could expose me to sanctions and  
11 punishment in the nature of contempt. I solemnly promise that I will not disclose  
12 in any manner any information or item that is subject to this Stipulated Protective  
13 Order to any person or entity except in strict compliance with the provisions of this  
14 Order.

15 I further agree to submit to the jurisdiction of the United States District  
16 Court for the Eastern District of Washington, for the purpose of enforcing the  
17 terms of this Stipulated Protective Order, even if such enforcement proceedings  
18 occur after termination of this action.

19 Date: \_\_\_\_\_

20 City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_

1           **IT IS SO ORDERED.**

2           The District Court Clerk is directed to enter this Order and provide copies to  
3           counsel.

4           **DATED August 5, 2020.**



5           A handwritten signature in blue ink that reads "Thomas O. Rice".  
6           THOMAS O. RICE  
7           United States District Judge